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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3978

12 **MARK JASON HARRY**
13 **766 Hacienda Drive**
14 **Riverside, CA 92507**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
84312

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about July 22, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 84312 to Mark Jason Harry (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on December 31, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300(a) of the Code states that "[e]very license issued may be suspended or revoked."

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AND REGULATORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4059 of the Code provides, in pertinent part, that a person may not furnish
6 any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
8 dangerous device except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 10. Section 4060 of the Code states:

11 No person shall possess any controlled substance, except that furnished to a
12 person upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
14 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
15 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
16 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
17 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
19 shall not apply to the possession of any controlled substance by a manufacturer,
20 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
21 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
22 physician assistant, when in stock in containers correctly labeled with the name and
23 address of the supplier or producer.

24 Nothing in this section authorizes a certified nurse-midwife, a nurse
25 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
26 stock of dangerous drugs and devices.

27 11. Section 4301 of the Code states:

28 The board shall take action against any holder of a license who is guilty of
unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud,
deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

....

(j) The violation of any of the statutes of this state, or any other state, or of the

United States regulating controlled substances and dangerous drugs.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

12. Title 16, California Code of Regulations, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

13. Title 16, California Code of Regulations, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and

1 Professions Code, a crime or act shall be considered substantially related to the
2 qualifications, functions or duties of a licensee or registrant if to a substantial degree
3 it evidences present or potential unfitness of a licensee or registrant to perform the
4 functions authorized by his license or registration in a manner consistent with the
5 public health, safety, or welfare.

6 COST RECOVERY

7 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 DRUG

12 15. Hydrocodone/APAP, also known by the brand names, Vicodin, Norco, Vicodin ES
13 and Vicodin HP, is a schedule III controlled substance as designated by Health and Safety Code
14 section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section
15 4022. Hydrocodone/APAP is used as a narcotic analgesic in the relief of pain.

16 FIRST CAUSE FOR DISCIPLINE

17 (October 27, 2010 Criminal Conviction for Sale of Controlled Substance and 18 Burglary on June 18, 2010)

19 16. Respondent is subject to disciplinary action under section 4301(l) of the Code in that
20 he was convicted of a crime that is substantially related to the qualifications, duties, and functions
21 of a pharmacy technician. The circumstances are as follows:

22 a. On or about October 27, 2010, in a criminal proceeding entitled *The People of*
23 *the State of California v. Mark Jason Harry*, in Riverside County Superior Court, case number
24 RIF10003613, Respondent was convicted on his plea of guilty for violating Health & Safety Code
25 section 11352(a), the transport, sale and distribution of a controlled substance, a felony and Penal
26 Code section 459, burglary, reduced to a misdemeanor.

27 b. As a result of the conviction, on or about October 27, 2010, Respondent was
28 sentenced to three years formal probation, to pay all applicable fines, fees and restitution and to
serve 180 days in jail.

1 c. The facts that led to the conviction were that Respondent was employed as a
2 pharmacy technician at the Costco Pharmacy in Corona, California. On or about June 18, 2010,
3 the Pharmacist-in-Charge received a report from the warehouse inventory lead that 200 tablets of
4 hydrocodone/APAP were missing. They checked the shelf and discovered two empty pill bottles.
5 The Pharmacist-in-Charge and Costco management then reviewed surveillance footage and
6 observed Respondent, while on duty as a pharmacy technician, reaching into the shelf where the
7 empty pill bottles were located and "doing something funny." They also observed Respondent
8 sitting in a vehicle with another Costco employee in the parking lot and the other employee
9 walking to his car with a bag. After Respondent and the other employee returned to their shifts,
10 Costco management and the Pharmacist-in-Charge checked the inside of Respondent's and the
11 other employee's vehicles and observed an unlabeled prescription bottle with tablets inside the
12 other employee's vehicle.

13 d. Costco management and the Pharmacist-in-Charge contacted the Corona Police
14 Department who commenced an investigation and interviewed Respondent during the course of
15 the investigation. Respondent admitted to one of the officers that he stole 200 tablets of Norco
16 (hydrocodone/APAP) from Costco and that he sold them to the other employee. Respondent
17 further admitted to the officer that he had taken 35-40 tablets of hydrocodone/APAP for his own
18 personal use and that the stolen tablets of hydrocodone/APAP were located in the center console
19 of his vehicle. The officers subsequently searched his vehicle and found 45 hydrocodone tablets.
20 The officers also searched the other employee's vehicle and located 200 tablets of 10mg-325mg
21 Norco. Respondent was arrested and terminated for selling and possessing controlled substances
22 from his place of employment, Costco Pharmacy.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct-Dishonesty and Deceit)

25 17. Respondent is subject to disciplinary action for unprofessional conduct under section
26 4301(f) of the Code in that Respondent's theft from his employer constitutes dishonesty and
27 deceit, as is more fully described in paragraph 16 above.
28

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violations of the Chapter)**

3 18. Respondent is subject to disciplinary action under section 4301(o) of the Code for
4 violation of the Pharmacy Act in that on or about June 18, 2010, Respondent possessed a
5 controlled substance and dangerous drug, hydrocodone/APAP, in violation of Code section 4059
6 and 4060 as is more fully described in paragraph 16, above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

9 19. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
10 on or about June 18, 2010, Respondent violated the California Uniform Controlled Substances
11 Act (Health and Safety Code 11000, et seq.) by possessing a controlled substance and dangerous
12 drug as is more fully described in paragraph 16, above.

13 **DISCIPLINARY CONSIDERATIONS**

14 20. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine
15 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that before
16 Respondent was licensed as a pharmacy technician, on or about September 10, 2001, in a criminal
17 proceeding entitled *The People of the State of California v. Mark Jason Harry*, in Riverside
18 County Superior Court, case number RIF097120, Respondent was convicted on his plea of guilty
19 for violating Welfare & Institutions Code section 10980(c)(2), welfare fraud, a felony
20 (subsequently reduced to a misdemeanor and subsequently expunged pursuant to Penal Code
21 section 1203.4). As a result of the conviction, Respondent was sentenced to three years informal
22 probation and to pay all applicable fees, fines and restitution. The conviction was disclosed on
23 Respondent's application for licensure.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

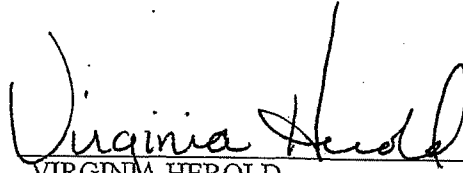
27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 84312,
28 issued to Mark Jason Harry;

1 2. Ordering Mark Jason Harry to pay the Board of Pharmacy the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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7
8 DATED: _____

5/27/11



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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